

MEMORANDUM

To: Zoning Board of Appeals

From: Howard Koontz, AICP

Date: July 5, 2012

Subject: ZBA 12-072: Steve Montgomery, applicant on behalf of John Olds, owner of 5610 Roberts Drive, Dunwoody, GA 30338, seeks the following: Variance from Chapter 27, Sections 27-1303 and 27-1356 to encroach the setback for a retaining wall and accessory structure. The tax parcel number is 18 378 09 006.

ITEM DESCRIPTION

The site is located on the west side of Robert's Drive, at its intersection with Glenrich Drive, between Chamblee Dunwoody and Spalding Drive. The property is currently zoned R-100 (Single Family Residential). The applicant's request is to bring into compliance an already-constructed retaining wall, which encroaches the minimum distance from the side lot line, and an accessory basketball court structure, which also encroaches the minimum distance from the side lot line.

Site Plan Analysis

The site, zoned R-100, comprises an existing single-family detached home on a 32,527 square foot (0.7467 acre) lot. The property abuts single-family home development on all sides. The applicant installed a retaining wall along the northern side lot line, and concurrently installed a basketball court accessory structure in the northwest corner of the property. Because of the wall location inside the minimum distance from the side lot line found in §27-1303, and the accessory structure location within the required side yard found in §27-1356, the applicant seeks a variance from the side yard setback requirement for a retaining wall and an accessory structure.

BACKGROUND

Conditions of the Zoning Ordinance

Article 27, §27-1574(1) identifies the following criteria for evaluation that should be examined when determining the appropriateness of a variance:

- a) Variances from the provisions or requirements of this Chapter shall be authorized only upon making all of the following findings:

1. By reason of exceptional narrowness, shallowness, or shape of a specific lot, or by reason of exceptional topographic conditions, which were not created by the owner or applicant, the strict application of the requirements of this Chapter would deprive the property owner of rights and privileges enjoyed by other property owners in the same zoning district; *There are no unique dimensions nor topographical conditions on the site per se;*
The site is nearly .75 acres, perfectly rectangular and not exceptionally narrow, shallow nor oddly shaped. The previously existing home is generally constructed at a size and scale of the current performance standards expected on a lot of this size. There are no exceptional topographic conditions on the rear of the lot, where the wall and court were constructed. The lot could have otherwise continued to be used and enjoyed without need for the variance proposed.
2. The requested variance does not go beyond the minimum necessary to afford relief, and does not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zoning district in which the subject property is located;
The request does not exceed the minimum required to complete the proposed project, as drawn. Affording the applicant the permission to construct this basketball court addition would be a special privilege not available to other properties in the zoning district. The retaining wall "condition" can be remedied by moving soil away from the uphill side of the wall and therefore creating the appearance of a privacy wall instead of a retaining wall.
3. The grant of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zoning district in which the subject property is located;
Staff can identify one potential public welfare related concern associated with this request: the activity undertaken on the ball court could be loud enough to be a nuisance to current and future owners of the property to the north. While the design and appearance of the wall and accessory structure are consistent with other sites in the area, the location of the structures is closer than is allowed in the ordinance.
4. The literal interpretation and strict application of the applicable provisions or requirements of this Chapter would cause undue and unnecessary hardship;
The request is discretionary in nature and, by virtue of being already constructed, any associated hardship is self-created. The request is not made to avoid any undue or unnecessary hardship present on the development site, as none have been identified, and required yards are not in and of themselves hardships which need to be overcome through variances.

and
5. The requested variance would be consistent with the spirit and purpose of this Chapter and the City of Dunwoody Comprehensive Plan text.



The applicant's request is generally not consistent with the spirit and purpose of the Zoning Ordinance, effectively because it does not conform to the construction setback requirements found in Chapter 27. The request on its face does not appear to impact the Comprehensive Plan at all.

RECOMMENDED ACTION

Staff **does not support** the requested variance, due to its discretionary nature.

Attachments

- Location Map
- Application and Site Plan